

PROPOSED RULE AMENDMENTS

Public Hearing:

November 28, 2018 – 10:00 am

Full Commission Vote:

November 30, 2018- 9:00 am

**Wake Technical Community College
Public Safety Training Center
321 Chapanoke Rd.
Raleigh, NC 27502**

Instructions for Oral and Written Comments: The objection, reasons for the objection, and the clearly identified portion of the rule to which the objection pertains, must be submitted in writing to:

Charminique Williams
Department of Justice
Criminal Justice Standards Division
PO Drawer 149
Raleigh, NC 27602.



Title: Minimum Standards for Criminal Justice Officers, Notification of Criminal Charges Convictions
Agency: Criminal Justice Education and Training and Standards Commission
Contact: Charminique Williams
Impact Summary: State Government: No
Local Government: No
Substantial Impact: No
Small Business: No

12 NCAC 09B .0101 Minimum Standards for Criminal Justice Officers
12 NCAC 09G .0302 Notification of Criminal Charges Convictions

Statutory authority for the rule change: G.S. 17C-6; 17C-10.

Amendment: On August 17, 2018 the Criminal Justice Education and Training Standards Commission proposed amendments to the aforementioned rules in order to:

Provide clarity regarding criminal process notification requirements for officers and agencies.

- ☐ **State Impact:** None
- ☐ **Local Government Impact:** No
- ☐ **Substantial Economic Impact:** No
- ☐ **Small Business Impact:** No

*Rules begin on the following page

12 NCAC 09B .0101 is proposed for amendment as follows the italicize language is scheduled to go before the Rules Review Commission 09.20.18:

SUBCHAPTER 09B - STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT; EDUCATION; AND TRAINING

SECTION .0100 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT

12 NCAC 09B .0101 MINIMUM STANDARDS FOR CRIMINAL JUSTICE OFFICERS

Every criminal justice officer employed by an agency in North Carolina shall:

- (1) be a citizen of the United States;
- (2) be at least 20 years of age;
- (3) be of good moral character pursuant to G.S. 17C-10 and as evidenced by the following:
 - (a) not having been convicted of a felony;
 - (b) not having been convicted of a misdemeanor as defined in 12 NCAC 09B .0111(1) for five years or the completion of any corrections supervision imposed by the courts, whichever is later;
 - (c) not having been convicted of an offense that, under 18 U.S.C. 922, incorporated by reference with subsequent amendments and editions (found at no cost at (<http://www.gpo.gov/fdsys/pkg/USCODE-2011-title18-part1-chap44-sec922.pdf>), would prohibit the possession of a firearm or ammunition;
 - (d) having submitted to and produced a negative result on a drug test within 60 days of employment or any in-service drug screening required by the appointing agency that meets the certification standards of the Department of Health and Human Services for Federal Workplace Drug Testing Programs. A list of certified drug testing labs that meet this requirement may be obtained, at no cost, at (<https://www.samhsa.gov/programs-campaigns/drug-free-workplace/guidelines-resources/drug-testing/certified-lab-list>);
 - (e) submitting to a background investigation consisting of the verification of age and education and a criminal history check of local, state, and national files;
 - (f) being truthful in providing information to the appointing agency and to the Standards Division for the purpose of obtaining probationary or general certification;
 - (g) not having pending or outstanding felony charges that, if convicted of such charges, would disqualify the applicant from holding such certification, pursuant to North Carolina General Statute 17C-13; and
 - (h) not engage in any conduct that brings into question the truthfulness or credibility of the officer, or involves "moral turpitude." "Moral Turpitude" is conduct that is contrary to justice, honesty, or morality, including conduct as defined in: re Willis, ~~299~~ 288 N.C. 1,

215 S.E. 2d 771 appeal dismissed 423 U.S. 976 (1975); in re State v. Harris, 216 N.C. 746, 6 S.E. 2d 854 (1940); in re Legg, 325 N.C. 658, 386 S.E. 2d 174(1989); in re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); in re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E. 2d 647 (1983); and later court decisions that cite these cases as authority.

- (4) have been fingerprinted and a search made of local, state, and national files to disclose any criminal record;
- (5) have been examined and certified by a licensed surgeon, physician, physician assistant, or nurse practitioner to meet physical requirements necessary to properly fulfill the officer's particular responsibilities and shall have produced a negative result on a drug screen administered according to the following specifications:
 - (a) the drug screen shall be a urine test consisting of an initial screening test using an immunoassay method and a confirmatory test on an initial positive result using a gas chromatography/mass spectrometry (GC/MS) or other reliable initial and confirmatory tests as may, from time to time, be authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs;
 - (b) a chain of custody shall be maintained on the specimen from collection to the eventual discarding of the specimen;
 - (c) the drug screen shall test for the presence of at least cannabis, cocaine, phencyclidine (PCP), opiates, and amphetamines or their metabolites;
 - (d) the test threshold values meet the requirements established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs, as found in 82 FR 7920 (2017) incorporated by reference, including later amendments and editions (found at no cost at <https://www.federalregister.gov/documents/2017/01/23/2017-00979/mandatory-guidelines-for-federal-workplace-drug-testing-programs>);
 - (e) the test conducted shall be not more than 60 days old, calculated from the time when the laboratory reports the results to the date of employment;
 - (f) the laboratory conducting the test shall be certified for federal workplace drug testing programs, and shall adhere to applicable federal rules, regulations, and guidelines pertaining to the handling, testing, storage, and preservation of samples;
- (6) have been administered a psychological screening examination by a clinical psychologist or psychiatrist licensed to practice in North Carolina or by a clinical psychologist or psychiatrist authorized to practice in accordance with the rules and regulations of the United States Armed Forces within one year prior to employment by the employing agency to determine the officer's mental and emotional suitability to properly fulfill the responsibilities of the position;
- (7) have been interviewed personally by the Department head or his representative or representatives to determine such things as the applicant's appearance, demeanor, attitude, and ability to communicate;

(8) make the following notifications:

- (a) within 5 business days notify the Standards Division and the appointing agency head in writing of all criminal offenses that the officer is arrested for or charged with, pleads no contest to, pleads guilty to or is found guilty, ~~guilty of as well as Domestic Violence Orders (50B) that are issued by a judicial official.~~ This shall include all criminal offenses except minor traffic offenses and shall specifically include any offense of Driving Under The Influence (DUI) or Driving While Impaired (DWI). A minor traffic offense is defined, for purposes of this Subparagraph, as an offense for which the maximum punishment allowable by law is 60 days or less. Other offenses under Chapter 20 (Motor Vehicles) of the General Statutes of North Carolina or similar laws of other jurisdictions which shall be reported to the Standards Division expressly include G.S. 20-139 (persons under influence of drugs), G.S. 20-28(b)(driving while license permanently revoked or permanently suspended), and G.S. 20-166 (duty to stop in event of accident); ~~The notifications required under this Subparagraph shall be in writing and shall specify the nature of the offense, the court in which the case was handled, the date of the arrest or criminal charge, the final disposition, and the date thereof. The notifications required under this Subparagraph shall be received by the Standards Division within 30 days of the date of arrest or charge and of case disposition. The requirements of this Subparagraph shall be applicable at all times during which the officer is certified by the Commission and shall also apply to all applicants for certification. Officers required to notify the Standards Division under this Subparagraph shall also make the same notification to their employing or appointing executive officer within 20 days of the date the case was disposed of in court.~~
- (b) In addition, within five business days of service, officers shall notify the Standards Division of all Domestic Violence Orders (G.S. 50B) and Civil No Contact Orders (G.S. 50C) that are issued by a judicial official against the officer as well as any notifications received from a District Attorney or other source that an officer is not fit to testify before court (i.e. Giglio);
- (c) within 20 days of the date the case was disposed of in court, notify the executive officer of the adjudication of these criminal charges, Domestic Violence Orders (G.S. 50B) and Civil No Contact Orders (G.S. 50C);
- (d) within 30 days of the date the case was disposed of in court, the ~~The~~ executive officer, provided he or she has knowledge of the officer's arrests or criminal charges and final dispositions, shall also notify the Standards Division of all arrests or criminal charges and final disposition, Domestic Violence Orders (50B) and Civil No Contact Orders (G.S. 50C); ~~dispositions within 30 days of the date the case was disposed of in court.~~
- (e) the required notifications in this section shall be in writing and shall specify the nature of the offense or order, the court in which the case was handled, the date of the arrest, criminal

1 charge, or service of the order, the final disposition, and shall include a certified copy of
2 the order or court documentation and final disposition from the Clerk of Court in the county
3 of adjudication:

4 (f) the requirements of this Subparagraph shall be applicable at all times during which the
5 officer is employed and certified by the Commission and shall also apply to all applicants
6 for certification:

7 (g) Receipt receipt by the Standards Division of a single notification, from either the officer or
8 the executive officer, shall be sufficient notice for compliance with this Subparagraph.

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10 *History Note: Authority G.S. 17C-6; 17C-10;*

11 *Eff. January 1, 1981;*

12 *Amended Eff. February 1, 2019; October 1, 2018; April 1, 2018; October 1, 2017; September 1,*
13 *2001; April 1, 1999; January 1, 1995; November 1, 1993; July 1, 1990.*
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12 NCAC 09G .0302 is proposed for amendment as follows:

12 NCAC 09G .0302 NOTIFICATION OF CRIMINAL CHARGES/CONVICTIONS

(a) Every person employed and certified as a correctional officer or probation/parole officer shall make the following notifications:

(1) within 5 business days notify the Standards Division and the appointing agency head in writing
~~notify the Standards Division~~ of all criminal offenses for which the officer is charged, arrested, pleads no
 contest, pleads guilty, or of which the officer is found guilty. ~~Criminal offenses shall include all felony~~
~~offenses and shall include those misdemeanor offenses delineated in 12 NCAC 09G .0102. This shall include~~
all criminal offenses except minor traffic offenses and shall specifically include any offense of Driving Under
The Influence (DUI) or Driving While Impaired (DWI). A minor traffic offense is defined, for purposes of
this Subparagraph, as an offense for which the maximum punishment allowable by law is 60 days or less.
Other offenses under Chapter 20 (Motor Vehicles) of the General Statutes of North Carolina or similar laws
of other jurisdictions which shall be reported to the Standards Division expressly include G.S. 20-139
(persons under influence of drugs), G.S. 20-28(b)(driving while license permanently revoked or permanently
suspended), and G.S. 20-166 (duty to stop in event of accident);

~~(b) The notifications required under this Rule shall be in writing, specify the nature of the offense, the court in which~~
~~the case was handled, the date of arrest or criminal charge, the final disposition, and the date thereof. The notifications~~
~~required under this Paragraph shall be received by the Standards Division within 30 days of the date the case was~~
~~disposed of in court.~~

(2) In addition, within five business days of service, officers shall notify the Standards Division of all
Domestic Violence Orders (50B) and Civil No Contact Orders (G.S.50C) that are issued by a judicial official
against the officer;

~~(c) The requirements of this Rule shall be applicable at all times during which the officer is certified by the~~
~~Commission.~~

(3) within 20 days of the date the case was disposed of in court, notify the executive officer of the
adjudication of these criminal charges, Domestic Violence Orders (50B) and Civil No Contact
Orders (G.S.50C);

~~(d) Officers required to notify the Standards Division under this Rule shall also make the same notification to their~~
~~employing or appointing executive officer within 20 days of the date the case was disposed of in court. The executive~~
~~officer, provided he or she has knowledge of the officer's arrest(s), criminal charge(s), or final disposition(s), shall~~
~~also notify the Standards Division of all arrests or criminal convictions within 30 days of the date of the arrest and~~
~~within 30 days of the date the case was disposed of in court. Receipt by the Standards Division of a single notification,~~
~~from either the officer or the executive officer, shall be sufficient notice for compliance with this Rule.~~

(4) within 30 days of the date the case was disposed of in court, the executive officer, provided he or
she has knowledge of the officer's arrests or criminal charges and final dispositions, shall also notify the

Standards Division of all arrests or criminal charges and final disposition, Domestic Violence Orders (50B) and Civil No Contact Orders (G.S.50C):

(5) the required notifications in this section shall be in writing and shall specify the nature of the offense or order, the court in which the case was handled, the date of the arrest, criminal charge, or service of the order, the final disposition, and shall include a certified copy of the order or court documentation and final disposition from the Clerk of Court in the county of adjudication;

(6) the requirements of this Subparagraph shall be applicable at all times during which the officer is employed and certified by the Commission and shall also apply to all applicants for certification;

(7) receipt by the Standards Division of a single notification, from the officer or the executive officer, shall be sufficient notice for compliance with this Subparagraph.

History Note: Authority G.S. 17C-6;

Temporary Adoption Eff. January 1, 2001;

Eff. August 1, 2002;

Amended Eff. February 1, 2019; January 1, 2015; August 1, 2004.